In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.1380 of 2006.

Date of decision:22.1.2007.

Roop Chand and others.

...Appellants.

Versus

Gram Panchayat.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.S.M.Sharma Advocate for the appellants.

Mr.R.K.Jain Advoate for the respondent.

...

Judgment.

S. N. Aggarwal, J.

The appellants in their suit for permanent injunction pleaded that they were co-owners in possession of the land comprised in Khewat No.149/147, Khata No.158, Khasra No.99 (2-10) shown in red, yellow and plain colour in the site plan appended with the plaint. The respondent-Gram Panchayat had no right,title or interest in it but the said panchayat was bent upon to construct pucca phirni through and over the portion of the land owned and possessed by the appellants, described above.

The respondent-Gram Panchayat filed written statement and contested the case. Legal objections were pleaded and on merits it was asserted that the suit land was a part of Khasra No.93 which was owned and

possessed by the respondent-Gram Panchayat and that they want to construct pucca phirni through khasra No.93. It was also pleaded that earlier, brothers of Ombir appellant No.2 and other co-owners had encroached over the phirni land owned and possessed by the Gram Panchayat but the encroachment was got removed in pursuance of order dated 4.5.1998 passed by this Court. Hence, it was submitted that the respondent was constructing pucca phirni through Khasra No.93 owned and possessed by the respondent-Gram Panchayat.

Issues were framed.

The parties led the evidence.

The learned trial Court held that the pucca phirni was being raised by the respondent-Gram Panchayat through the land owned and possessed by the appellants and accordingly the learned trial Court restrained the respondent from making construction of pucca phirni on the land owned and possessed by the appellants. However, it was held that the respondent would be at liberty to make construction of pucca phirni and in case the appellants were found in possession of any portion of Khasra No.93, the same would be got removed by the respondent as per procedure established by law. Accordingly, the suit was decreed by the learned trial Court vide judgment and decree dated 5.9.2005.

The appeal filed by the respondent-Gram Panchayat was accepted by the learned Lower Appellate Court on the plea that it was beyond the jurisdiction of Civil Court and the suit was not maintainable . The appeal filed by the respondents was accepted by the learned Lower Appellate Court vide judgment and decree dated 28.2.2006.

Hence, the present appeal.

The submission of learned counsel for the appellants was that the suit land was a part of Khasra No.99 owned and possessed by the appellants and the respondent-Gram Panchayat was illegally constructing the pucca phirni through the land owned and possessed by the appellants.

Since the dispute was about the khasra number of the site in dispute, the Court granted liberty to the appellants to file an application before the Tehsildar for demarcation and the Tehsildar was directed to get the demarcation done and to submit the report as to whether the suit land was a part of Khasra No.93 or if it was a part of Khasra No.99. The revenue authorities have conducted the demarcation proceedings and submitted the report which is taken on record. The report reveals that the suit land was a part of Khasra No.93 which was owned and possessed by the respondent-Gram Panchayat.

The learned counsel for the appellants made reference to the report submitted by the revenue authorities and submitted that there was an error committed by the consolidation authorities and,therefore, the appellants be permitted to seek correction in the revenue record.

Since the site in dispute is a part of Khasra No.93, the appellants have no case. Therefore, there is no merit in the present appeal and the same is dismissed.

January 22,2007. (S. N. Aggarwal)
Jaggi Judge